Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

OZ OPTICS, LTD.,

Petitioner,

v.

DIMENSIONAL COMMUNICATIONS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Third Circuit affirmed the District Court's order denying leave to file a counterclaim because the motion was filed after the deadline in the Pretrial scheduling Order for amendment of pleadings; the Magistrate Judge found, and the District Judge affirmed, that Petitioner failed to establish "good cause" under Fed. R. Civ. Proc. 16(b) for the extension of a deadline. The "good cause" requirement was employed to override the standard of Fed. R. Civ. Proc. 13 (f) permitting a party to assert a compulsory counterclaim when the failure to do so previously was the result of inadvertence or excusable neglect or when the interests of justice require allowing the counterclaim to be asserted. Further, the good cause requirement for an extension of a Pretrial Scheduling Order deadline overshadowed the mandate of Fed. R. Civ. Proc. 15 (a) that leave to amend the pleadings is to be freely given when the interests of justice require.

The counterclaim Petitioner was denied the ability to assert was related to the affirmative defense asserted of setoff\recoupment, based on the Plaintiff resorting to self help and wrongfully seizing and retaining possession of property the Petitioner paid for and rightfully owned. The seizure of Petitioner's property was based on his refusal to pay for extra contractual charges that were never disclosed to nor authorized or approved by Petitioner. The District Court failed to charge the jury on the law governing self help, thus leaving the jury utterly without guidance on the law to apply to the undisputed facts established by the evidence, i.e., that the Plaintiff seized and retained control of Petitioner's property, causing Petitioner to incur additional expenses to replace the wrongfully seized and retained property. Not surprisingly, without knowing the relevant law to guide its analysis of the evidence, the jury

concluded that the Petitioner was not entitled to relief on the defense\claim for setoff\recoupment.

The Plaintiff sought recovery for multiple categories of extra contractual charges and expenses, and as the evidence for each of the categories of charges and expenses varied, the jury was required to individually weigh the evidence for each category of damages sought by the Plaintiff. However, the District Court used a general verdict form which allowed the jury to award a "lump sum" verdict, without any delineation of what expenses and charges the jury concluded, based on the evidence, the Plaintiff was entitled to recover. This is significant, because the Plaintiff sought a total of $534,810.92 but the jury returned a verdict of $492,766.01 as damages. The general verdict form makes it impossible to discern what categories of charges and expenses sought were allowed or disallowed by the jury, thus depriving Petitioner of effective and meaningful appellate review of the damages verdict.

The questions presented are:

1. Whether Fed. R. Civ. Proc. 16(b) requiring good cause for the extension of the deadline in a Pretrial Scheduling Order applies to a Motion to Amend the pleadings t. assert a compulsory counterclaim, or if instead the Motion to Amend is governed solely by the interests of justice standard of Fed. R. Civ. Proc. 13 (f) and the liberal standard for amendment of pleadings under Fed. R. Civ. Proc. 15(a)?

2. Whether the failure to charge the jury on the applicable law that governs the jury's assessment of the factual evidence, resulting in the jury disregarding undisputed testimony that supported the defense to a breach of contract claim, warrants granting a new trial?

3. Whether in a case in which the Plaintiff seeks recovery for multiple categories of extra contractual charges, the evidence for which varies for each category of charges, the failure to utilize a specific verdict form, thus precluding appellate review of the adequacy of the evidence, requires granting a new trial?

CORPORATE DISCLOSURE STATEMENT

Petitioner Oz Optics Ltd. has no parent company and no publicly held company owns 10 percent or more of the corporation's stock.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit is dated August 12, 2005. (Appendix A). By Order dated September 13, 2005, the United States Court of Appeals for the Third Circuit denied the Petition for Rehearing. (Appendix H). The Third Circuit affirmed the decision of the United States District Court for the District of New Jersey dated October 9, 2003 (Appendix E), in which the District Judge affirmed the Order dated July 15, 2003, in which the Magistrate Judge denied the Defendant leave to file a counterclaim (Appendix G). The Third Circuit also affirmed the decision of the District Court dated March 1, 2004 denying Defendant's Motion for Judgment NOV or in the alternative, for a new trial. (Appendix B).

STATEMENT OF JURISDICTION

The Court's Jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Third Circuit's opinion was rendered on August 12, 2005. (Appendix A). A Petition for Rehearing was denied by Order dated September 13, 2005. (Appendix H).

STATEMENT OF THE CASE

Petitioner Oz Optics, Ltd. ("Oz") is a Canadian corporation engaged in the manufacture of optical fiber communications equipment, with its principal place of business in Ontario, Canada. Respondent Dimensional Communications, Inc. ("DCI") is a New Jersey corporation that designs, manufactures and installs trade show booths.

The District Court exercised jurisdiction under 28 U.S.C. § 1332(a)(2).

DCI filed a Complaint for breach of contract, book account and quantum meruit in the United States District Court for the District of New Jersey on October 22, 2001. Oz filed an answer asserting the affirmative defense of set-off/recoupment. On November 12, 2002, the Magistrate Judge entered a Pretrial Scheduling Order that set December 31, 2002 as the deadline for filing motions to amend the pleadings. On May 16, 2003, Oz filed a motion to amend its answer to assert a counterclaim for conversion for the seizure of the trade show booth and other property. The Magistrate Judge denied Oz's motion, finding that Oz did not demonstrate good cause for failure to comply with the Pretrial Scheduling Order, and concluded that Oz's actions constituted undue delay and evidenced dilatory motive that did not meet the liberal amendment provisions of Fed. R. Civ. Proc. 15 (a). (Appendix G). On appeal of the denial of the Motion to Amend, the District Judge affirmed the denial. (Appendix E).

After a jury trial in December of 2003, the jury rendered a verdict in favor of DCI in the amount of $492, 766.01 and found that Oz was not entitled to any recoupment or setoff. The District court denied Oz's Motion for Judgment as a matter of law, or in the alternative, for a new trial. (Appendix B).

Oz and DCI entered into a contract for DCI to construct a trade show booth for Oz to use to market its optical fiber communications equipment. It was undisputed that Oz paid in full the cost of the construction of the trade show booth, $420,000, and that Oz paid in full for plasma screen